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Autonomy and the Nature of moral Norms

P. Cobben

1. Moral Law and absolute Value

The moral law lays down norms to guide actions. It allows distinguishing between actions oriented to the good and actions oriented to evil. What, however, lays down norms for the norms? How is the distinction between good and evil as such possible?

Here, there is no sense in identifying good and evil with the opinions the persons of action have about them. This opinion may vary from person to person and from moment to moment. The law would lose its character as a law: it would no longer lay down *universal* norms for actions. This universality seems only guaranteed if good and evil can be absolutely determined. How could this be done?

Laying down norms for actions can be considered on the analogy of laying down norms in the case of the process of knowing. True and false knowledge are distinguished, not on the basis of the knowing subject's opinion about truth, but on that of an absolute norm determined by what is known. The knowledge of something is true, if its nature is known. Something is known in its nature if its essence is known. Analogously it can be maintained that the absolute good has to be determined as something that is good in itself.

This analogy raises a problem. Knowledge is related to a given objectivity, to 'something' in reality. This does not apply to acting, which at best *produces* something in reality. Aristotle tries to solve this problem by identifying good and moral action.¹⁾ Moral action produces something in reality: the moral community. The moral community can be considered as the nature, the essence of the community of action, for only as *manners* do actions have a continuous identity and can they be characterized as something with an absolute essence. Good action is moral action. Only moral action has its own essence. Moral action makes itself the purpose. Therefore, it is the only action with an inner, and therefore absolute, telos, an absolute norm. Only by manners do the actions constituting the community have a specific content.

From this perspective the ethical law is identified with the community's law. Good action coincides with action that conforms to the prevailing law. This introduces a problem. Why should the prevailing law represent the absolute

1. 'Therefore, the Good of man must be the end of the science of Politics.', Aristotle, Nicomachean Ethics, I, ii.7 (Loeb). 'Da nun in allen Wissenschaften und Künsten das Gute Ziel ist, so gilt dies am meisten und vor allem in der wichtigsten von allen, nämlich die Kunst des Staatsmannes. Das politische Gute ist das Gerechte, und dieses ist das, was der Allgemeinheit zuträglich ist.', Aristoteles, *Politik*, Drittes Buch 1282 a, Artemis Verlag Zürich/Stuttgart, p.158.

good? In other societies other laws exist; the present law can differ from the law of the past or that of future.²⁾ Clearly the law must be defined more rigorously. It must express the absolute good *as regards content*. This excludes any concept of law that makes law only a human product. In this case it would be a finite product, unable to represent the *absolute good*. In other words, the law must have an absolute, *divine* content.

If the law has a divine content, it is no longer clear why the actions which realize the good, still have to be explained as social actions. Good actions are rather actions realizing the absolute; for example religious actions in which God becomes real by being honoured, or actions in which divine values are realized. Or better, because the absolute cannot be realized by an external power, they must be actions in which the absolute good realizes *itself*.

At this point the analogy between true knowledge and good action seems to lose its meaning. Why should the absolute good be realized? Does the need for realization not undermine its absolute status? Should it not rather be said that the absolute good is only good if it is already real all the time? In that case, what is the sense of willing good actions for human beings?

Maybe this dilemma can be solved as follows. The parallel between true and good actions substantializes the moral dimension. Good action is interpreted as the realization of *the good*, which is thought of as an absolute substance. In that sense a difference is immediately introduced by speaking about the moral dimension, i.e. the difference between the absolute good which 'exists' and the person performing moral actions, who is distinguished from the absolute good. Thus the moral law does not lay down norms for actions in which the good is realized, but for actions in which the difference between the good and the person performing an action is eliminated.

The line of thought just followed can be represented in the next scheme: the moral dimension is grounded on the presupposition of an absolute value, which is thought of as an absolute substance. This absolute value introduces a difference between itself and the finite subject. It is on the basis of this difference that the moral law exists. The law makes the distinction between actions in which the person eliminates his distinctness from the absolute value and actions in which this does not happen.

2. Absolute Value versus 'Creatio ex Nihilo'

Is there any alternative to the position just reported? Can the moral dimension be conceptualized without presupposing an absolute substance understood as an absolute value? Following Lacan, Paul Moyaert tries to develop this alterna-

2. See also A. MacIntyre, 'Postscript to Greek ethics', in: *A short history of ethics*, London 1989, 86-109.

tive. He wants to understand the moral law as a *creatio ex nihilo*,³⁾ which means that the difference between good and evil actions cannot be reduced to the existence of the good as a pre-given substance, but is established by the law itself. The law constitutes the difference between good and evil actions.

This alternative position undeniably seems to have advantages. The question no longer has to be raised how the absolute value can be determined at all with respect to its content. Moral action does not presuppose absolute value. The law has no ground; it exists in as far as it practically manifests itself. By installing the law the difference between good and evil actions is constituted. *Good* are actions which observe the law; *evil* are actions which violate the law. To the question why actions are good, no nearer answer is possible: they are good because of their observance of the law.

Yet I do not think this alternative position provides us much help. Mediatly the value problems return. Why should the person performing an action mind the law at all? Because for him the law represents an absolute value. Why can the law represent an absolute value? Because it distinguishes good and evil in an absolute way. The two positions seem to mirror one another; they refer to one another. In the first approach the absolute value is presupposed. It is concluded that this value establishes the law. In the second case the law is the presupposition. Now it is concluded that the law establishes the absolute value. In neither case is it possible to give a necessary determination of moral actions with respect to their substantial content.

Kant's categorical imperative can be considered as a synthesis of both positions. In a free translation this imperative runs as follows: the person performing the action (that is, the subject who can make a free choice between good and evil actions) ought to make his freedom the absolute purpose.⁴⁾ Here the moral law presupposes - as in the first position - an absolute value: the freedom of the person as the absolute purpose. The law expresses that the realization of the absolute value coincides with good action. At the same time, however, the presupposed absolute value has a very special status: it coincides with the freedom of the person performing the action. It does not function as an *external* criterion for laying down norms for actions. The action is, by being perpetrated, laying down norms for itself. The criterion for acting comes in that sense 'from nowhere', that it cannot appeal to an external ground. Free-

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3. 'The absolute difference (the absolute boundary) instituted by the symbolic order, is a *creatio ex nihilo*. In opposition to the Aristotelian position, in Lacan's view, the law loses each *fundamentum in re*.' In: Paul Moyaert, *Ethiek en sublimatie*, Nijmegen 1994, p. 71.
 4. 'Das Prinzip: handle in Beziehung auf ein jedes vernünftige Wesen (auf dich selbst und andere) so, daß es in deiner Maxime zugleich als Zweck an sich selbst gelte, ist demnach mit dem Grundsatz: handle nach einer Maxime, die ihre eigene allgemeine Gültigkeit für jedes vernünftige Wesen zugleich in sich enthält, im Grunde einerlei.' In: I. Kant, *Grundlegung zur Metaphysik der Sitten*, Felix Meiner (1965), p. 62.

dom is founded in itself; it cannot be reduced to something else. Kant expresses this by calling the moral law a *factum der Vernunft*.⁵⁾ The free person performing the action is a *reasonable* subject. Reason produces the moral law from itself.

With the Kantian position a progress is made. It is no longer necessary to make a choice between the two preceding positions. This means a liberation from the arbitrariness to make the absolute value the preposition in one case, and the law in another. The two positions not only reflect one another, but also have an internal connection. On the one hand the moral law cannot be absolutely valid without foundation in the absolute good; on the other hand the absolute good cannot be external to the law.

3. Is the moral Law Natural?

What is the meaning of the preceding exposition for the question whether the moral law is *natural*? Until now, we have been confronted with two positions diametrically opposing one another with respect to this point of naturalness. The pre-given absolute value gives the moral law a 'natural' ground; the *creatio ex nihilo*, as totally arbitrary, lacks all naturalness. But what about the categorical imperative, the synthesis of naturalness and unnaturalness?

Kant's moral law represents a naturalness of the second order. It follows from the nature of human reason. Like freedom, however, the nature of human reason is no nature in the sense which was previously given to this word. Its nature consists in not coinciding with any natural determination. True enough, nature here also expresses the essence of reason. But in this case the similarity of the essence to itself is not given. The essence of freedom is similar to itself, because it is *created* by freedom in abolishing the dissimilarity to itself. *In that sense* freedom has a nature which creates itself. Therefore this nature is a *creatio ex nihilo*.

Because of this foundation in the nature of human reason, Kant's moral law is a *natural* law. But because this nature is of the second order, it does not help us to determine the moral law with respect to its *content*. Therefore the advantage Aristotle gained by determining the moral law as a natural law is lost. This time the moral law cannot be identified with the law of society, the *human law*.

True enough, this is not the opinion of Kant himself. He mentions an example of a possible concretization: it can be deduced from the moral law that stealing is forbidden. The gist of the argument is as follows: the institution of property allows a certain form of realizing freedom. The proprietor can freely have the disposal of his property. If stealing is generally allowed, the institution of property becomes meaningless. That makes it impossible for the proprietor to execute the his freedom rights any longer. In that sense stealing is

5. I. Kant, *Kritik der praktischen Vernunft*, Felix Meiner (1967), p. 36.

an action which does not aim at freedom. Therefore, stealing is morally not allowable.⁶⁾

Hegel's objection to Kant is that his reasoning is only valid if the institution of property is presupposed. The ban on steal is meaningless in a society without the institution of property. Therefore, the prohibition cannot be interpreted as the universal realization of the moral law. Kant's realization does not transcend here the law of non-contradiction: the institution of property cannot at the same time be valid and not valid.⁷⁾

Hegel's general criticism of Kant's moral law concerns its external relationship to the first-order nature: moral action is *not* determined by nature but by freedom. The first consequence is that the substantial determination of the moral action *essentially* comes to testing an external content. No content is moral in itself. In the second place it is not clear how Kant's version of the moral law can be conceptualized without contradiction. On the one hand he has to assume that free action realizes the absolute good; on the other hand, however, he cannot maintain this position, because it implies that the rupture between freedom and nature is nullified.⁸⁾

Whoever wants to subscribe to Hegel's criticism of Kant must be able to conceptualize human freedom in such a way that freedom and nature are internally related. Essentially, it must be possible for real action to become valid as the self-expression of the moral law. To solve this problem, two strategies are basically possible:

1. to hold to the Kantian separation between spirit and nature, modifying the concept of spirit in such a way that the free action making itself the absolute value can be shown to have an internal connection with *certain* real actions.
2. to give up the separation between spirit and nature, so that the free action making itself the absolute value has been determined as a real action all the time.

4. Habermas

The first route is taken by Habermas. In his conception the freedom of the human spirit consists in its power to *freely* (i.e. not determined by any interest) interpret the naturally given reality. An interpretation is called *true* if it results

6. Kant rather gives the example of a *depositum* being stolen. (*Kritik der praktischen Vernunft*, 31) Hegel generalizes this example into property in general. See the next footnote.

7. G.W.F. Hegel, 'Über die wissenschaftlichen Behandlungsarten des Naturrechts, seine Stelle in der praktischen Philosophie und sein Verhältnis zu den positiven Rechtswissenschaften', in: *Jenaer Schriften 1801-1807* (Suhrkamp Verlag 1986), p. 462/3.

8. See also G.W.F. Hegel, *Phänomenologie des Geistes* (Felix Meiner Verlag, 1952), Die Verstellung, p. 434 e.v.

from universal consensus reached under ideal conditions. These conditions are ideal - in a negative sense - if the domain of nature (the interests) does not play a role in the interpretation and - in a positive sense - if it is the human spirit itself which determines the interpretation: by producing the interpretation on the basis of arguments. Here, the free action making itself the absolute value is understood as the interpretative act of the communicative reason. This reason makes reasonable interpretation its absolute purpose. It is the *telos* of the communicative reason, according to Habermas, to reach a shared understanding by means of pure argumentation, i.e. by means of reason itself.⁹⁾ Habermas thinks that his concept of communicative reason allows the deduction of a universal moral law (the so-called *Universalisierungsgrundsatz*, briefly indicated by Habermas as >U<), which lays down norms for real actions (i.e. actions in the domain of *nature*). *Mediately* it can be understood that the *telos* of the communicative reason can only be realized if real acting observes a norm which meets certain conditions: 'Every valid norm has to fulfil the condition that all concerned can accept the consequences and the side effects its universal observance can be anticipated to have for the satisfaction of everyone's interests (and that these consequences are preferred to those of known alternative possibilities for regulation.'¹⁰⁾

>U<, according to Habermas, necessarily follows from his concept of communicative reason because it can be deduced from the conditions which make ideal consensus possible at all.

Here, I do not enter into the details of his argumentation. This is not necessary. Habermas' conception of communicative reason makes clear enough that his position can offer few perspectives. In the discourse theory of truth, what is interpreted can only unambiguously be determined by abstraction from its determination. This is a plain contradiction, which cannot be hidden under any ingenious construction.¹¹⁾

5. Hegel

The second possibility is elaborated by Hegel. Nature is conceptualized as 'the other one from the spirit'. Spirit and nature cannot be independently determined. They dialectically relate to one another, form a relative contradiction.

In contrast to Kant, the reality of free action is not *formally* determined by Hegel. In his conception the reality of free action does not oppose nature, but is always real action. It is based on insight into nature and creates something in

9. See also J. Habermas, *Theorie des kommunikativen Handelns I*, Frankfurt/M., 1981, p. 387: 'Verständigung wohnt als Telos der menschlichen Sprache inne.'

10. "Diskursethik - Notizen zu einem Begründungsprogramm", in: J. Habermas, *Moralbewußtsein und kommunikatives Handeln*, Frankfurt/M., 1983, p. 75/6.

11. For a criticism of the *discourse theory* of truth and rightness see: A. Wellmer *Ethik und Dialog*, Frankfurt/M., 1986.

reality. By his dialectical conception of the relationship between spirit and nature, it is this very possibility of insight into nature which Hegel wants to express. Nature is not alien to the spirit. Were this the case, then any insight into nature would be impossible. Nature is 'the other one *from* the spirit', which means: nature is 'the other one', has its own independence, but is nevertheless knowable. It is possible for the spirit to comprehend nature in its *own essence*. In that sense, the spirit can appropriate nature; it can make the nature of nature its own.

Based on Hegel's starting point, a new meaning can be given to the free action which makes itself the absolute value. This action is based on absolute insight into nature, i.e. insight in nature's own essence. For such a spirit real action results in nothing but its own self in the form of otherness.

Judging from these last formulations, the Hegelian position does not seem to be much of an improvement on Kant. While Kant makes the moral law inhuman by opposing to much freedom and corporeality, Hegel does the same by demanding from the moral subject a divine insight into nature. However, how can such an absolute insight into nature ever be related to human reality?

Is man able to obtain absolute knowledge of nature? According to Hegel he is, at least to a certain extent. This appears in the existence of 'free' societies, i.e. societies in which the prevailing law is a *human* law. The prevailing law can be called *human* if it has a human rather than a divine origin. If the citizens of a state observe a law of which the human origin is recognized, it means that they submit to a human power, rather than to a divine power (or to a ruler who rules in the name of a divine power). Why should they do that? Not because the ruler or the ruling upper ten is physically stronger. With respect to strength the upper ten are always surpassed by the numerous citizens. The citizens conform, according to Hegel, because they are convinced that the law represents a true insight. Man is capable of insight into nature. On the basis of this insight he is able to transcend nature's order. He can create a society in which not *nature*, but *insight* into nature is the starting point. This is expressed in the legal order. The legal order transforms human actions from actions inspired by passions and instincts (and therefore belonging to the order of nature) into actions at the service of an order designed by man himself (and therefore presupposing a certain insight into the order of nature). The citizen of the human law can feel himself free, because he has the conviction that by conforming to the law, he objectively expresses that man is the essence of nature (being able to understand nature in its own essence).

What are the consequences of all this for the determination of the moral law? Hegel wanted to give the moral law a content by relating it to an *absolute* insight into nature. What then is the use of a legal order expressing insight into nature *to a certain extent*? A possible answer could be: as human beings we just do not have absolute knowledge of nature at our disposal. *As far as* we have of insight into nature, it has been expressed in the legal order. Therefore, if we want to give the moral law a content, the best we can do is identify it with the human law. True enough, we know this identification only to be cor-

rect to a certain extent (our insight is dependent on a process of historical education), but we do not have anything better.

Such an answer would make a kind of reflected Aristotle of Hegel. Like Aristotle he would identify the moral law with the law of the state. But he should add that this identification is not absolute, because the state can undergo a historical development. This makes the absolute (the moral law) something conditional which, therefore, undermines the absolute. For Hegel such a contradictory position is not acceptable.

In what way does it make sense for Hegel to introduce a human law which expresses insight into nature *to a certain extent*? How is such a human law related to the moral law?

The answer to this question can be found in the chapter '*der Geist*' of Hegel's *Phänomenologie des Geistes*. This chapter begins with an analysis of the Ancient Greek world. Here, it is important that the Greek world is described according to the model of the polis. The polis is ruled by a human law, meeting the qualifications which have been given before. For the citizens of the polis the human law coincides with the moral law. Besides the human law, however, there is a second moral law: the *divine law*. This law is not kept by the citizens (the men), but by the woman. In this law subjective freedom has been made the norm in the most elementary and abstract way. Basically it is only expressed *that* subjective freedom has an absolute value. But in no way is this determined with respect to the content.

In the chapter '*der Geist*' European history - from Antiquity until Hegel's time - is interpreted from a specific point of view, i.e. as the dialectic movement in which the synthesis between human and divine law is established. For our problem this movement is of great importance. Its starting point is a society in which the human law is identified with the moral law. In the same society the moral law has, in practice, also a *relative* position, because a second moral law is valid. In principle this second law attributes absolute value to subjective action. However, it is not able to determine the meaning of this with respect to content. We know the conditions which allow subjective action to realize its absolute value: the subject must have an absolute insight into nature. We also know that the human law represents insight into nature *to a certain extent*. From all this the conclusion seems to be justified that the process in which the synthesis between human and divine law is established, is also the process in which the absolute insight into nature is established with respect to content. The question which at first did not have an answer, now seems to have been solved as yet in a historical way.

Is the program intended by Hegel workable? And if so, does an ultimate determination of the moral law with respect to its content follow from this?

6. Intermezzo: Derrida's Criticism of Hegel

In his book *Glas*¹²⁾ J. Derrida reviews the dialectical synthesis between human and divine law, which Hegel establishes on the level of the Greek world. He concludes that this synthesis can immanently be rejected, i.e. on the basis of Hegel's own criteria. The discussion of Derrida's criticism will also provide the starting point for a further discussion of the questions mentioned above.

Derrida interprets the relationship between divine and human law as a master/servant relationship. (Glas, 153-161) The state (the highest goal of the human law) consists of a collection of many families (the highest goal of the divine law). Every family has its own particular interest. This can essentially cause a struggle of life and death between the many families. By the formation of the state order this struggle is suspended. The families subject themselves to the general interest that manifests itself in the state. The suppressed family interest, however, remains lying in wait and forms a potential threat to the state's unity. Thus, state and family are dialectically related. The family's particular interest is elevated (*dialektisch aufgehoben*) in the state's general interest.

Hegel, according to Derrida, can only establish the synthesis between divine and human law if he is able to show that human and divine law get involved in an absolute conflict, so absolute that the conflict is fought out until death. The necessity of the struggle is exemplarily discussed by means of the *Antigone* of Sophokles' tragedy.

Antigone serves her particular family interest by fulfilling her duty as a family member: she buries the body of her fallen brother, Polyneikes. In the eyes of king Kreon, the keeper of the human law, however, Polyneikes is a traitor, who has nearly ruined the state. On pain of death, therefore, he forbids his funeral.

The fact is, Derrida is interested in Hegel's reasons for arguing that Antigone, despite Kreon's threat of the death penalty, fulfils her family duty. (Glas, 164 ff) A quotation from Sophokles' *Antigone* is the starting point of Hegel's explanation. Antigone maintains that her duty with respect to her brother is the highest. Higher than her possible duty with respect to her husband or children. Why is this so? According to Hegel, it is because the relationship between brother and sister is connected '*mit dem Gleichgewichte des Blutes und begierdeloser Beziehung ...*' (PhdG, 326/7) This must be the reason that the brother/sister relationship is the closest approximation of the ethical relation, i.e. the relation in which the individuals recognize one another as self-conscious individuals. That may also be the reason why Antigone rather rebels against the human law at the moment the prohibition concerns her brother's funeral.

Derrida's criticism of Hegel schematically boils down to the following. The

12. J. Derrida, *Glas*, Paris 1974.

human law is the self-conscious, public law. The conflict between human and divine law (which is the condition for synthesizing both laws at all) is connected with the divine law's process of becoming self-conscious. Hegel places this process of becoming self-conscious in the context of the brother/sister relationship. The nature of this relationship, however, is a complete *Fremdkörper* within Hegel's system. (Glas, 170) The process of becoming self-conscious is always understood as 'elevated desire' (as the many families become self-conscious by elevating their desires into the state). The brother/sister relationship, however, is characterized by the lack of desire. Why then does Hegel concentrate on the brother/sister relationship? Derrida gives a biographical explanation: he puts it down to the remarkable relationship Hegel had with his sister Christiana.

7. Evaluation of Derrida's Criticism

Does this deconstruct Hegel's line of thought? I do not think so. To begin with, Derrida gives a false representation of Hegel's development of the relationship between human and divine law. In the *Phenomenology of Spirit* this relationship is not conceptualized as a master/servant relationship at all. Derrida equates the state kept by the human law with the state which, according to Hobbes, results from the social contract of all with all. The content of the Hobbian state is undetermined. On the other hand, the content of the human law is determined in that sense, that it expresses, to a certain extent, a reasonable insight into nature. As keepers of a general, reasonable insight the citizens are *free*. This means in the first place that their insight concerns the essence of nature itself; in principle the citizen is able to make a distinction between himself and nature. Under the conditions of the polis this insight is not made explicit *as such*. The citizen is identical with his role as a citizen and in that sense 'is' the free insight represented by the human law. If, however, the citizen coincides with the specific insight represented by the human law, he is not free. For he is free in as far as he has an insight into *something*, if he is able to understand the nature of this 'something' and thus is also able to make the distinction between himself and what he understands. Therefore the human law's freedom is tied up with a presupposition: the relationship between the individual having the insight and the insight's object. Under the conditions of the polis this presupposition is only given in a rudimentary way: as the immediately given distinction between human and divine law. The divine law makes the free individual its absolute purpose in a purely formal sense. This free individual has no relation to its free content, but he remains purely formal. He remains *beside* the real content (of the state), which falls to the other law, the human one. Human and divine law are equally one-sided. They absolutize one moment of freedom and cause the two different moments to remain *beside* one another - apparently without inner relationship. Contrary to Derrida's view, the divine law has nothing to do with desire and is no power which threatens free-

dom. On the contrary, the divine law is itself a moment of freedom. A moment of freedom, however, which absolutizes itself.

In the second place, how is Antigone's becoming self-conscious to be understood? It has nothing to do with the elevation of *Begierde* (desire). Antigone is already conscious all the time. The only problem is that this self-consciousness is still purely formal. Therefore it has to remain internal and cannot acquire any meaning in the real world of the polis. In as far as Antigone expresses herself (in the funeral act), she is only formally indicating that the free self-consciousness has absolute value. The process of becoming self-conscious which is at stake for Hegel is a substantial one; it is the process in which Antigone's self-consciousness obtains a concrete content. Only because of this can she play her role in the real world and only because of this can she enter into the conflict with the human law. This is the first step on the way to a synthesis between the two laws.

8. The absolute Spirit as the completed Synthesis between Human and Divine Law

Why is Antigone's process of becoming self-conscious with respect to the content especially connected with her brother's death and funeral? Here the '*Gleichgewicht des Blutes*' and the '*begierdeloser Beziehung*' are important. For Antigone the brother symbolizes the *reality* of her ethical essence: the absolute value of the formally free action. As a citizen the brother is an individual who *really* acts freely. The citizen's action, however, is neither formal (the human law's content is realized), nor absolute (the citizen is interchangeable with another citizen). For Antigone, however, the action of the citizen as brother is indeed formal: for her that action is self-conscious in as far as it produces a reality outside the family. For her the content of this reality is not important: the divine law is her absolute ethical substance. This could also be valid for Antigone's possible *husband*. Unlike the brother's action, however, the husband's action is not absolute for Antigone. Hegel has two arguments (which he borrows from Sophokles' text). First: from the perspective of the woman (under the conditions of the Ancient Thebes) a deceased husband can in principle be replaced by another man. (PhdG, 326) This is not the case for a brother (even if Antigone's parents were alive: it remains totally uncertain *whether* a new brother will be born). The main argument, however, is that the brother is of the same blood, of the same nature as Antigone. In her brother Antigone is confronted with an individual who for her is *not* interchangeable. In that sense the brother is, for Antigone, an *absolute* individual. Thus he symbolizes, as remarked, the reality of Antigone's absolute essence: the absolute value of formal, free action. Because of her brother, Antigone's internal nature is no longer *only* internal. It has objective reality; it is a part of the reality of the ethical world.

Now it can be understood how Antigone's process of becoming self-con-

scious has to be conceptualized. Because of his special status Antigone experiences the loss of her brother as a *self-loss*, as the loss of her objective reality. Therefore, the requirement of the divine law (the burial of the family members) has a different status for Antigone with respect to her brother than with respect to the other family members. Generally the burial of a family member means the repair of the internal certitude, threatened by the death of the family member: the absolute value of the formal, free action (of the formal self-consciousness) threatens to get lost. Death transforms the individual into a thing, the dead corpse. The dead corpse is not able to free actions. On the contrary, it is dependent on the 'actions' of an external nature: it is eaten by wild animals and desintegrated by physical and chemical processes. The body is given back to nature by these external forces. By the burial act this return to nature becomes an act of the self-consciousness. For Antigone the absolute value of the formal free action already had objective reality in her brother. The loss of her brother caused an absolute pain. By this pain Antigone has felt through her objective reality as her *own*, internal reality. Therefore the burial of the brother becomes a self-conscious act, an action in which Antigone wants to realize her objective reality *once more*. For that reason Antigone *cannot* give up the funeral, not even when threatened by Kreon's death-penalty.

In the total confrontation between the divine and human law the only thing that can be saved is what connects the two laws. What is saved is already determined in the relationship between Antigone and Polyneikes: in the formal, free actions of her brother Antigone recognizes the reality of her absolute essence. Therefore the reality of the polis has to be transformed into a society in which the formal, free action is the absolute value.

Hegel identifies this new society with the Roman Empire. The law ruling here is the property law. As a person the individual has the absolute right to dispose of his property. This freedom is indeed only formal. It can in no way be determined with respect to its content. It is dependent on the immediately given, subjective arbitrariness of the individual.

Does this mean that the property law can be identified with the moral law? Not according to Hegel. He argues that the Roman Empire basically cannot be understood as a steady order. It cannot be made comprehensible why this property order *as such* should necessarily exist. Therefore the property law is not *absolute* and is unable to bear the moral law.

Now it is clear which way is still open to conceptualize the moral law as a natural law. It must be shown that subjective, free action, with regard to its content, is not only not accidental, but could also get a positive realization in a real society. Hegel thinks he can meet the first demand. In his opinion, the period of European history following the Roman Empire and resulting in the French Revolution, can be interpreted as a process of experience, in which the subject is learning that reality can basically be understood as the expression of his pure insight. Because of that, subjective action loses its casualness. What the subject wants is reasonable, based on general insight into reality. On the other hand, Hegel does not seem to be able to meet the second demand. If the

subject wants real action and wants to model society according to his general insight, he will oppose the other subjects, who want the same. The real action of the other subject contradicts the illusion of the first subject that his own action is the basis of all reality. To keep his illusion intact, he must resist the foreign action. Because this reasoning is valid for every subject, the result is the struggle of life and death of all against all. The French Revolution, according to Hegel, had to end in terror.

Does this mean that the effort to conceptualize the moral law as a natural law has definitely failed? In some sense it does for Hegel. It has become clear that the absolute moral law not only presupposes an absolute insight into reality, but also a type of action which has overcome all one-sidedness. The human subject, however, is basically unable to meet this last demand. His action is finite, and opposes the actions of other subjects. Hegel concludes that the absolute action only has a meaning on the level of world history: as the process in which and by which the absolute spirit realizes itself as absolute spirit.

9. About the Nature of the moral Law

What are the implications of all this for the individual subject? Does it not lead to total indifference, because there is no way for a solitary person to influence world history? Not according to Hegel. In as far as reason realizes itself in world history, this happens in and by the confrontation between *free* states. In their turn the free states only exist in and by the actions of free citizens. Therefore, the moral law which the individual has to obey can be formulated as 'being a good citizen of the free state in which one lives'.

Also Socrates used this last formulation.¹³⁾ Nevertheless it is not Hegel's purpose to follow Socrates uncritically. By the historical development after Ancient Greece the concept *free state* was given a closer determination. In his *Grundlinien der Philosophie des Rechts* Hegel develops to which institutional basic schemes the free state has to meet. Only in those states is citizenship an ethical requirement. In this way the *naturalness* of the moral law is filled in as an ethical positivity. A positivity, however, which has to meet particular criteria of freedom.

The problem with Hegel's approach is that no justice is done to the absolute value of the particular individual. World history is not unconditionally dependent on the concrete action of *this particular, not interchangeable* individual. Therefore his actions as citizen cannot become valid as an absolute duty.

13. 'Auf die Frage eines Vaters nach der besten Weise, seinen Sohn sittlich zu erziehen, gab ein Pythagoreer (auch anderen [handschriftlich: dem Sokrates] wird sie in den Mund gelegt) die Antwort: wenn du ihn zum *Bürger eines Staats von guten Gesetzen* machst.' In: G.W.F. Hegel, *Grundlinien der Philosophie des Rechts*, Suhrkamp Verlag (1982), par. 153 Anmerkung.

Because of this, Hegel does not do justice to the autonomy of the finite, human subject. To do justice to the absolute value of the particular individual, to charge his *autonomy*, the absolute insight underlying the moral action must not be understood as an absolute insight into '*the*' reality, but as an absolute insight into the way reality is accessible to a particular individual. The moral law should make the realization of *this* content its purpose. The naturalness of the ethical law should be related to the individual 'nature' of the particular individual. On this occasion the implications of all this cannot be elaborated.